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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/512,145

05/10/2005

David John Moody

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EXAMINER

TESKIN, FRED M

ART UNIT

PAPER NUMBER

1713

MAIL DATE

DELIVERY MODE

05/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/512,145

Applicant(s)

MOODY ET AL.

Examiner

Fred M. Teskin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Amendments presented in the reply of March 5, 2007 have been fully considered and deemed to obviate the Section 112 rejection presented in the previous Office action. Claims 1-5, 7-14 and 16-19 remain pending and under examination herein.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7-14 and 16-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/02953 ("Avecia"), in view of the evidence provided by Greene et al.

The basis of the rejection and the examiner's position regarding the applied art are adequately set forth in the previous Office action and that explanation is incorporated herein by reference.

Applicants' arguments filed March 5, 2007, have been fully considered but are not persuasive of error in the repeated rejection.

Applicants argue (Reply, p. 6) that the skilled person reading the Avecia disclosure would not contemplate the employment of poly-aryl methane protecting groups because unlike phenyl alkyl protecting groups, poly-aryl methane groups (e.g., trityl) are removed not by hydrogenation, but by acid cleavage, and conditions suited to the formation of electron-deficient species are, therefore, liable to cause deprotection of the poly-aryl methane groups. Citing page 4, lines 22-25 of Avecia, applicants argue

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that conditions taught for the polymerization of monomers in Avecia are specifically intended to generate electron deficient species in the form of free radicals.

Applicants' argument is unpersuasive because, firstly, the cited portion of Avecia refers to a free radical initiator as preferred not required (i.e., "preferably used to initiate polymerization," per page 4, line 22). The generically disclosed polymerization procedure does not stipulate the presence of a free radical initiator (*cf.*, page 2, ll. 5-10 and 21-26). Second, even if one assumes *arguendo* that Avecia requires free-radical initiation of polymerization, both hydrogenation and acid-catalysed hydrolysis are mentioned therein as methods appropriate for removal of hydroxyl protecting groups (see page 3, ll. 12-15). Thus, even if hydroxyl protecting groups such as poly-aryl methane are removable only *via* acid cleavage, they would not have been perceived by those of ordinary skill in the art as unsuitable for protecting the hydroxyl group of the hydroxyl(polyC₂₋₄alkyleneoxy)-based monomer of Avecia, since Avecia contemplates the use of hydroxyl protecting groups removable by methods including acid-catalysed hydrolysis.

Regarding applicants' assertion (Reply, p. 7) that the skilled person would not consider taking the step of using poly-aryl methane protecting groups for the applicants' monomers and their polymerization because of real concerns about the ability of the poly-aryl methane group to remain attached under the polymerization conditions taught by Avecia, examiner notes that statements in the remarks section of a reply are not evidence and must be supported by an appropriate affidavit or declaration. See MPEP 716.01(c)(II). No objective evidence has been proffered to substantiate how one skilled

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in the art would interpret the full teachings of Avecia, and an unsupported assertion of the significance the skilled person would attach to the polymerization conditions taught by Avecia is not entitled to great weight.

Accordingly, the continued rejection is still deemed tenable and therefore must be maintained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner F. M. Teskin whose telephone number is (571) 272-1116. The examiner can normally be reached on Monday through Thursday from 7:00 AM - 4:30 PM, and can also be reached on alternate Fridays.

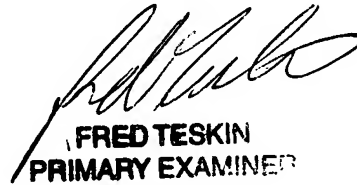
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached on (571) 272-1114. The appropriate fax phone

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number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FMTeskin/05-17-07


FRED TESKIN
PRIMARY EXAMINER
MB